



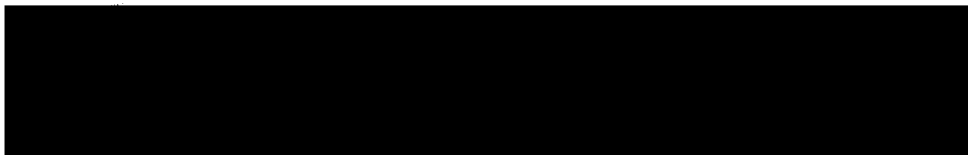
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-144-52051

Office: Vermont Service Center

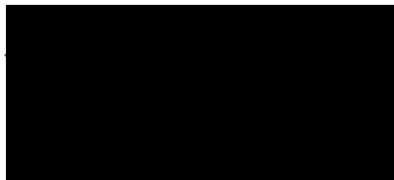
Date: 11 APR 2007

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as an "ordained elder/assistant pastor" at a wage of \$580 every two weeks, or \$15,080 per year.

The center director denied the petition on the grounds that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and that the petitioner failed to submit sufficient evidence that the beneficiary had been employed in the proposed capacity for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a written brief and additional documentation. Counsel argued that the petitioner submitted evidence of the prior work experience and that the position was shown to be a traditional occupation in the church.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation;

and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a church affiliated with the Presbyterian Church USA denomination. The petitioner claims a congregation of 144 members and three employees: the beneficiary full-time as ordained elder, a part-time musician and a part-time janitor. The beneficiary is a native and citizen of the Dominican Republic who was last admitted to the United States on November 17, 1994, as a B-2 visitor. The record reflects that he remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petitioner conceded on the petition form that the beneficiary has been employed in the United States without authorization.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue raised by the director is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are

examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The proposed position in this matter was stated as "ordained elder." The duties of the position were described as preaching when the pastor is absent, "teaching Bible," and assisting the pastor in his duties. In support of the petition, the petitioner submitted excerpts of the Constitution of the Presbyterian Church USA, the Book of Order, which states that elders and deacons are elected by the members of their congregation and are then "ordained" by a ceremonial laying-on-of-the-hands. There is no indication that specific theological training is required or that the position is either full-time or paid.

Based on the evidence submitted, the position of ordained elder appears to be one of several elective positions whereby members of a congregation may volunteer to serve as assistants to the minister or pastor of their church. The record does not demonstrate that this is a traditional full-time paid position engaged in as a religious vocation or occupation. Absent documentation showing that the position of ordained elder is traditionally a permanent salaried occupation within the Presbyterian Church USA denomination, it cannot be concluded that the petitioner has overcome the director's concerns.

The next issue is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 24, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 24, 1998.

The petitioner claimed that it has employed the beneficiary as an elder since September 1997. As noted by the petitioner's counsel, the center director erroneously concluded that the petitioner failed to submit evidence of the beneficiary's claimed employment with the petitioner. The petitioner in fact submitted copies of the beneficiary's federal tax return forms for 1998 and 1999. The petitioner also submitted a series of cancelled checks from the church reflecting the payment of a bi-weekly salary to the beneficiary in varying amounts for the requisite period.

The evidence submitted by the petitioner indicates that the beneficiary was employed by the church. However, the evidence does not reflect the capacity in which the beneficiary was allegedly employed. The petitioner did not furnish an employment contract, if one exists. To establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior of Principal of the denomination in the United States. Matter of Varughese, 17 I&N Dec. 399 (BIA 1980). In this case, the petitioner has submitted testimony from a member of the congregation identifying herself as the "clerk of session." While such evidence from an official of the petitioning church is considered, it is not sufficient to satisfy the burden of proof.

It is noteworthy that the petitioner claims to employ the beneficiary in a full-time salaried capacity as an elder, but there is no indication that it employs its pastor in a full-time salaried capacity. The petitioner did not furnish an explanation of this unusual practice. It is further noteworthy that the petitioner failed to establish that the small church with 144 members could reasonably employ both a pastor and an elder/assistant pastor. The petitioner must establish that the situation, nature, and volume of work to be performed could reasonably require an individual in the capacity sought. Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966).

Regarding the evidence submitted, the tax returns are not certified copies and the cancelled checks do not reflect the purpose of payment. Absent additional evidence, it cannot be concluded that the petitioner has established that it has continuously employed the alien beneficiary as an ordained elder for the two-year period.

It is also noted that the petitioner submitted documentation showing that the beneficiary has been a full-time student at a seminary during the qualifying period. During the qualifying period, the beneficiary's occupation would be considered that of a student rather than a religious worker. Study at a seminary does

not satisfy the two-year experience requirement. The record as constituted is insufficient to establish that the beneficiary was continuously carrying on a full-time religious occupation from at least April 1998 to April 2000.

A petitioner also must demonstrate its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner in this matter submitted various copies of its bank account statements. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.